



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2008-0702; FRL-9755-5]**

**Approval and Promulgation of State Implementation Plans; City of Albuquerque-Bernalillo County, New Mexico; Interstate Transport Affecting Visibility and Regional Haze Rule Requirements for Mandatory Class I Areas**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the City of Albuquerque – Bernalillo County, New Mexico State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. The EPA finds that these revisions to the State Implementation Plan (SIP) and associated rules meet the requirements of the Clean Air Act (CAA) and comply with the provisions of 40 CFR 51.309, thereby meeting requirements for reasonable progress for the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report for approval of the plan through 2018. We are also approving SIP submissions offered as companion rules to the Section 309 regional haze plan, specifically, rules for the Sulfur Dioxide Emissions Inventory Requirements and the Western Backstop Trading Program, submitted on December 26, 2003, September 10, 2008, and May 24, 2011, and rules for Open Burning, submitted on December 26, 2003 and July 28, 2011. These SIP revisions were submitted to address the requirements of the Act and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the “regional haze

program”). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

We are also approving a portion of the SIP revision submitted by the City of Albuquerque - Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing the “good neighbor” provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the PM<sub>2.5</sub> NAAQS. We are approving the portion of the SIP submittal that addresses the CAA requirement concerning non-interference with programs to protect visibility in other states. EPA is taking this action pursuant to section 110 of the CAA.

**DATES:** This final rule is effective **[insert date 30 days from the date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2008-0702. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov), or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at our Region 6

reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- i. The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- ii. The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- iii. The initials SIP mean or refer to State Implementation Plan.
- iv. The initials RH and RHR mean or refer to Regional Haze and Regional Haze Rule.
- v. The initials BC and the words Albuquerque and Bernalillo County mean the City of Albuquerque-Bernalillo County, New Mexico
- vi. The initials AQCB mean or refer to the Albuquerque/Bernalillo County Air Quality Control Board.
- vii. The initials BART mean or refer to Best Available Retrofit Technology.
- viii. The initials OC mean or refer to organic carbon.
- ix. The initials EC mean or refer to elemental carbon.

- x. The initials VOC mean or refer to volatile organic compounds.
- xi. The initials EGUs mean or refer to Electric Generating Units.
- xii. The initials NO<sub>x</sub> mean or refer to nitrogen oxides.
- xiii. The initials SO<sub>2</sub> mean or refer to sulfur dioxide.
- xiv. The initials PM<sub>10</sub> mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.
- xv. The initials PM<sub>2.5</sub> mean or refer to particulate matter with an aerodynamic of less than 2.5 micrometers.
- xvi. The initial RPGs mean or refer to reasonable progress goals.
- xvii. The initials RPOs mean or refer to regional planning organizations.
- xviii. The initials WRAP mean or refer to the Western Regional Air Partnership.
- xix. The initials GCVTC mea or refer to the Grand Canyon Visibility Transport Commission.

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## **I. Background**

The CAA requires each state to develop plans, referred to as SIPs, to meet various air quality requirements. A state must submit its SIPs and SIP revisions to us for approval. The Albuquerque/Bernalillo County Air Quality Control Board (AQCB) is the federally delegated air

quality authority for the City of Albuquerque and Bernalillo County, New Mexico (BC). The AQCB is authorized to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards. The AQCB has submitted a Section 309 regional haze SIP for its geographic area of New Mexico under the New Mexico Air Quality Control Act (section 74-2-4). The BC RH SIP is a necessary component of the regional haze plan for the entire State of New Mexico and is also necessary to ensure the requirements of Section 110(a)(2)(D)(i) of the CAA are satisfied for the entire State of New Mexico. Once approved, a SIP is enforceable by EPA and citizens under the CAA, also known as being federally enforceable. This action involves the requirement that states have SIPs that address regional haze and address the requirement that emissions from a state do not interfere with measures of other states to protect visibility.

#### **A. Regional Haze**

In 1990, Congress added section 169B to the CAA to address regional haze issues, and we promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300-309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

The AQCB submitted the BC RH SIP to EPA on July 28, 2011, and it adds to earlier RH SIP planning components that were submitted on December 26, 2003.

#### **B. Interstate Transport and Visibility**

On July 18, 1997, we promulgated new NAAQS for 8-hour ozone and for PM<sub>2.5</sub>. 62 FR

38652. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as we may prescribe. Section 110(a)(2)(D)(i)(II) of the Act requires that states have a SIP, or submit a SIP revision, containing provisions “prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts which will . . . interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA]...to protect visibility.” Because of the impacts on visibility from the interstate transport of pollutants, we interpret the “good neighbor” provisions of section 110 of the Act described above as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states, or a demonstration that emissions from BC sources and activities will not have the prohibited impacts on other states’ existing SIPs.

The EPA received a SIP revision adopted by AQCB on September 12, 2007 to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 ozone and PM<sub>2.5</sub> NAAQS.

### **C. Lawsuits**

In a lawsuit in the U.S. District Court for the District of Columbia, environmental groups sued us for our failure to timely take action with respect to the regional haze requirements of the CAA and our regulations. In particular, the lawsuit alleged that we had failed to promulgate federal implementation plans (FIPs) for these requirements within the two-year period allowed by CAA section 110(c) or, in the alternative, fully approve SIPs addressing these requirements.

As a result of this lawsuit, we entered into a consent decree. The consent decree requires that we sign a notice of final rulemaking addressing the regional haze requirements for Bernalillo County by November 15, 2012. We are meeting that requirement with the signing of this notice of final rulemaking.

#### **D. Our Proposal**

We signed our notice of proposed rulemaking on April 12, 2012, and it was published in the Federal Register on April 25, 2012 (77 FR 24768). In that notice, we provided a detailed description of the various regional haze requirements and interstate transport and visibility requirements. We are not repeating that description here; instead, the reader should refer to our notice of proposed rulemaking for further detail. In our proposal, we proposed to approve BC SIP revisions submitted on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. We proposed to find that all reviewed components of the SIP meet the requirements of 40 CFR 51.309. We also proposed to approve a portion of the BC SIP revision submitted on July 30, 2007, for the purpose of addressing the “good neighbor” provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the PM<sub>2.5</sub> NAAQS. This proposal proposed to approve the portion of the SIP submittal that addresses the CAA requirement concerning non-interference with programs to protect visibility in other states.

#### **E. Public Participation**

We requested comments on all aspects of our proposed action and provided a thirty-day comment period, with the comment period closing on May 25, 2012. We received comments on our proposed rule that supported our proposed action and that were critical of our proposed

action. In this action, we are responding to the comments we have received, taking final rulemaking action, and explaining the bases for our action.

## **II. Final Action**

In this action, EPA is approving City of Albuquerque - Bernalillo County, New Mexico SIP revisions submitted on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. We find that all reviewed components of the SIP meet the requirements of 40 CFR 51.309. In conjunction with this approval, we are also approving the following related rules: 20.11.46 NMAC, *Sulfur Dioxide Emission Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program* (submitted after initial adoption on December 26, 2003, with revisions submitted on September 10, 2008, and May 24, 2011) and 20.11.21 NMAC, *Open Burning* (submitted after initial adoption on December 26, 2003, with revisions submitted on July 28, 2011).

We are approving a portion of the SIP revision submitted by the City of Albuquerque - Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing the “good neighbor” provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the PM<sub>2.5</sub> NAAQS.<sup>1</sup> We are approving the portion of the SIP submittal that addresses the CAA requirement concerning non-interference with programs to protect visibility in other states.

## **III. Basis for Our Final Action**

We have fully considered all significant comments on our proposal and have concluded that no changes from our proposal are warranted. Our action is based on an evaluation of BC’s

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<sup>1</sup> There are four “prongs” under the “good neighbor” provisions of the CAA section 110(a)(2)(D)(i). On November 8, 2012 (75 FR 68447), we approved a SIP revision that air pollutant emissions from sources within BC do not significantly contribute to nonattainment of the 1997 ozone NAAQS and the PM<sub>2.5</sub> NAAQS in any other state. On September 19, 2012, we approved a SIP revision that air pollutant emissions from sources within BC do not interfere with prevention of significant deterioration (PSD) measures required in the SIP of any other state for the 1997 ozone and PM<sub>2.5</sub> NAAQS.

regional haze SIP submittal against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B. A detailed explanation of how the Albuquerque SIP submittal meets these requirements is contained in the proposal. All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on BC’s SIP submittal is based on CAA section 110(k).

We are approving BC’s regional haze SIP provisions because they meet the relevant regional haze requirements. Most of the adverse comments we received concerning our proposed approval of the regional haze SIP pertained to our proposed approval of the SO<sub>2</sub> backstop trading program

#### **IV. Issues Raised by Commenters and EPA’s Responses**

##### **A. Comments and responses common to participating states regarding proposed approval of the SO<sub>2</sub> backstop trading program components of the RH SIPs**

EPA has proposed to approve the SO<sub>2</sub> backstop trading program components of the RH SIPs for all participating States and has done so through four separate proposals: for the Bernalillo County proposal see 77 FR 24768 (April 25, 2012); for the Utah proposal see 77 FR 28825 (May 15, 2012); for the Wyoming proposal see 77 FR 30953 (May 24, 2012); finally, for the New Mexico proposal see 77 FR 36043 (June 15, 2012). National conservation organizations paired with organizations local to each state have together submitted very similar, if not identical, comments on various aspects of EPA’s proposed approval of these common program components. These comment letters may be found in the docket for each proposal and are dated as follows: May 25, 2012 for Bernalillo County; July 16, 2012 for Utah; July 23, 2012 for Wyoming; and July 16, 2012 for New Mexico. Each of the comment letters has attached a

consultant's report dated May 25, 2012, and titled: "Evaluation of Whether the SO<sub>2</sub> Backstop Trading Program Proposed by the States of New Mexico, Utah and Wyoming and Albuquerque-Bernalillo County Will Result in Lower SO<sub>2</sub> Emissions than Source-Specific BART." In this section, we address and respond to those comments we identified as being consistently submitted and specifically directed to the component of the published proposals dealing with the submitted SO<sub>2</sub> backstop trading program. For our organizational purposes, any additional or unique comments found in the conservation organization letter that is applicable to this proposal (i.e., for the City of Albuquerque -Bernalillo County) will be addressed in the next section where we also address all other comments received.

***Comment:*** The language of the Clean Air Act appears to require BART. The commenter acknowledges that prior case law affirms EPA's regulatory basis for having "better than BART" alternative measures, but nevertheless asserts that it violates Congress' mandate for an alternative trading program to rely on emissions reductions from non-BART sources and excuse EGUs from compliance with BART.

***Response:*** The Clean Air Act requires BART "as may be necessary to make reasonable progress toward meeting the national goal" of remedying existing impairment and preventing future impairment at mandatory Class I areas. See CAA Section 169A(b)(2). In 1999, EPA issued regulations allowing for alternatives to BART based on a reading of the CAA that focused on the overarching goal of the statute of achieving progress. EPA's regulations provided states with the option of implementing an emissions trading program or other alternative measure in lieu of BART so long as the alternative would result in greater reasonable progress than BART. We note that this interpretation of CAA Section 169A(B)(2) was determined to be reasonable by the D.C. Circuit in Center for Energy and Economic Development v. EPA, 398 F.3d 653, 659-

660 (D.C. Cir. 2005) in a challenge to the backstop market trading program under Section 309, and again found to reasonable by the D.C. Circuit in Utility Air Regulatory Group v. EPA, 471 F.3d 1333, 1340 (D.C. Cir. 2006)(“...[W]e have already held in *CEED* that EPA may leave states free to implement BART-alternatives so long as those alternatives also ensure reasonable progress.”). Our regulations for alternatives to BART, including the provisions for a backstop trading program under Section 309, are therefore consistent with the Clean Air Act and not in issue in this action approving a SIP submitted under those regulations. We have reviewed the submitted 309 trading program SIPs to determine whether each has the required backstop trading program (see 40 CFR 51.309(d)(4)(v)), and whether the features of the program satisfy the requirements for trading programs as alternatives to BART (see 40 CFR 51.308(e)(2)). Our regulations make clear that any market trading program as an alternative to BART contemplates market participation from a broader list of sources than merely those sources that are subject to BART. See 40 CFR 51.308(e)(2)(i)(B).

**Comment:** The submitted 309 Trading Program is defective because only 3 of 9 Transport States remain in the program. The Grand Canyon Visibility Transport Commission Report clearly stated that the program must be “comprehensive.” The program fails to include the other Western States that account for the majority of sulfate contribution in the Class I areas of participating States, and therefore Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participation by other Transport Region States compounds the program’s deficiencies.

**Response:** We disagree that the 309 trading program is defective because only 3 States remain in the program. EPA’s regulations do not require a minimum number of Transport Region States to participate in the 309 trading program, and there is no reason to believe that the

limited participation by the 9 Transport States will limit the effectiveness of the program in the 3 States that have submitted 309 SIPs. The commenter's argument is not supported by the regional haze regulations and is demonstrably inconsistent with the resource commitments of the Transport Region States that have worked for many years in the WRAP to develop and submit SIPs to satisfy 40 CFR 51.309. At the outset, our regulations affirm that "certain States...may choose" to comply with the 40 CFR 51.309 requirements and conversely that "[a]ny Transport Region State [may] elect not to submit an implementation plan" to meet the optional requirements. 40 CFR 51.309(a); see also 40 CFR 51.309(f). We have also previously observed how the WRAP, in the course of developing its technical analyses as the framework for a trading program, "understood that some States and Tribes may choose not to participate in the optional program provided by 40 CFR 51.309." 68 FR 33769 (June 5, 2003). Only five of nine Transport Region States initially opted to participate in the backstop trading program in 2003, and of those initial participants only Oregon and Arizona later elected not to submit 309 SIPs.

We disagree with the commenter's assertion that Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participating States must account for sulfate contributions to visibility impairment at Class I areas by addressing all requirements that apply under 40 CFR 51.308. To the extent Wyoming, New Mexico and Utah sources "do not account for the majority of sulfate contribution" at the 16 class I areas on Colorado Plateau, there is no legal requirement that they account for SO<sub>2</sub> emissions originating from sources outside these participating States. Aside from this, the modeling results detailed in the proposed rulemaking show projected visibility improvement for the 20 percent worst days in 2018 and no degradation in visibility conditions on the 20 percent best days at all 16 of the mandatory Class I areas under the submitted 309 plan.

Finally, we do not agree with the commenter's characterization of the Grand Canyon Visibility Transport Commission Report, which used the term "comprehensive" only in stating the following:

"It is the intent of [the recommendation for an incentive-based trading program] that [it] include as many source categories and species of pollutants as is feasible and technically defensible. This preference for a 'comprehensive' market is based upon the expectation that a comprehensive program would be more effective at improving visibility and would yield more cost-effective emission reduction strategies for the region as a whole."<sup>2</sup>

It is apparent that the Grand Canyon Visibility Transport Commission recommended comprehensive source coverage to optimize the market trading program. This does not necessitate or even necessarily correlate with geographic comprehensiveness as contemplated by the comment. We note that the submitted backstop trading program does in fact comprehensively include "many source categories," as may also be expected for any intrastate trading program that any state could choose to develop and submit under 40 CFR 51.308(e)(2). As was stated in our proposal, section 51.309 does not require the participation of a certain number of States to validate its effectiveness.

**Comment:** The submitted 309 trading program is defective because the pollutant reductions from participating States have little visibility benefit in each other's Class I areas. The States that have submitted 309 SIPs are "largely non-contiguous" in terms of their physical borders and their air shed impacts. Sulfate emissions from each of the participating States have little effect on Class I areas in other participating States.

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<sup>2</sup> The Grand Canyon Visibility Transport Commission, *Recommendations for Improving Western Vistas* at 32 (June 10, 1996).

**Response:** We disagree. The 309 program was designed to address visibility impairment for the sixteen Class I areas on the Colorado Plateau. New Mexico, Wyoming and Utah are identified as Transport Region States because the Grand Canyon Visibility Transport Commission had determined they could impact the Colorado Plateau class I areas. The submitted trading program has been designed by these Transport Region States to satisfy their requirements under 40 CFR 51.309 to address visibility impairment at the sixteen Class I areas. The strategies in these plans are directed toward a designated clean-air corridor that is defined by the placement of the 16 Class I areas, not the placement of state borders. “Air sheds” that do not relate to haze at these Class I areas or that relate to other Class I areas are similarly not relevant to whether the requirements for an approvable 309 trading program are met. As applicable, any Transport Region State implementing the provisions of Section 309 must also separately demonstrate reasonable progress for any additional mandatory Class I Federal areas other than the 16 Class I areas located within the state. See 40 CFR 51.309(g). More broadly, the State must submit a long-term strategy to address these additional Class I areas as well as those Class I areas located outside the state which may be affected by emissions from the State. 40 CFR 51.309(g) and 51.308(d)(2). In developing long-term strategies, the Transport Region States may take full credit for visibility improvements that would be achieved through implementation of the strategies required by 51.309(d). A state’s satisfaction of the requirements of 51.309(d), and specifically the requirement for a backstop trading program, is evaluated independently from whether a state has satisfied the requirements of 51.309(g). In neither case, however, does the approvability inquiry center on the location or contiguousness of state borders.

**Comment:** The emission benchmark used in the submitted 309 trading program is inaccurate. The “better-than-BART” demonstration needs to analyze BART for each source

subject to BART in order to evaluate the alternative program. The submitted 309 trading program has no BART analysis. The “better-than-BART” demonstration does not comply with the regional haze regulations when it relies on the presumptive SO<sub>2</sub> emission rate of 0.15 lb/MMBtu for most coal-fired EGUs. The presumptive SO<sub>2</sub> limits are inappropriate because EPA has elsewhere asserted that “presumptive limits represented control capabilities at the time the BART Rule was promulgated, and that [EPA] expected that scrubber technology would continue to improve and control costs would continue to decline.” 77 Fed. Reg. 14614 (March 12, 2012).

**Response:** We disagree that the submitted 309 trading program requires an analysis that determines BART for each source subject to BART. Source specific BART determinations are not required to support the better-than-BART demonstration when the “alternative measure has been designed to meet a requirement other than BART.” See 40 CFR 51.308(e)(2)(i)(C). The requirements of Section 309 are meant to implement the recommendations of the Grand Canyon Visibility Transport Commission and are regulatory requirements “other than BART” that are part of a long-term strategy to achieve reasonable progress. As such, in its analysis, the State may assume emission reductions “for similar types of sources within a source category based on both source-specific and category-wide information, as appropriate.” See *id.* The 309 States used this approach in developing their emission benchmark, and we view it to be consistent with what we have previously stated regarding the establishment of a BART benchmark. Specifically, we have explained that States designing alternative programs to meet requirements other than BART “may use simplifying assumptions in establishing a BART benchmark based on an analysis of what BART is likely to be for similar types of sources within a source category.” 71 FR 60619 (Oct. 13, 2006).

We also previously stated that “we believe that the presumptions for EGUs in the BART guidelines should be used for comparisons to a trading program or other alternative measure, unless the State determines that such presumptions are not appropriate.” *Id.* Our reasoning for this has also long been clear. While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing *regional* emissions reductions for the better than BART demonstration. See 71 FR 60619 (“the presumptions represent a reasonable estimate of a stringent case BART because they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas”). EPA’s expectation that scrubber technology would continue to improve and that control costs would continue to decline is a basis for not regarding presumptive limits as a default or safe harbor BART determination when the BART Guidelines otherwise call for a complete, case-by-case analysis. We believe it was reasonable for the developers of the submitted trading program to use the presumptive limits for EGUs in establishing the emission benchmark, particularly since the methodology used to establish the emission benchmark was established near in time to our promulgation of the presumptive limits as well as our guidance that they should be used. We do not think the assumptions used at the time the trading program was developed, including the use of presumptive limits, were unreasonable. Moreover, the commenter has not demonstrated how the use of presumptive limits as a simplifying assumption at that time, or even now, would be flawed merely because EPA expects that scrubber technology and costs will continue to improve.

**Comment:** The presumptive SO<sub>2</sub> emission rate overstates actual emissions from sources that were included in the BART benchmark calculation. In addition, States in the Grand Canyon

Visibility Transport Region have established or proposed significantly more stringent BART limits for SO<sub>2</sub>. Using actual SO<sub>2</sub> emission data for EGUs, SO<sub>2</sub> emissions would be 130,601 tpy, not the benchmark of 141,859 tpy submitted in the 309 trading program. Using a combination of actual emissions and unit-specific BART determinations, the SO<sub>2</sub> emissions would be lower still at 123,529 tpy. Finally, the same data EPA relied on to support its determination that reductions under the Cross State Air Pollution Rule are “better-than-BART” would translate to SO<sub>2</sub> emissions of 124,740 tpy. These analyses show the BART benchmark is higher than actual SO<sub>2</sub> emissions reductions achievable through BART. It follows that the submitted 309 trading program is flawed because it cannot be deemed to achieve “greater reasonable progress” than BART.

**Response:** The BART benchmark calculation does not overstate emissions because it was not intended to assess actual emissions at BART subject sources nor was it intended to assess the control capabilities of later installed controls. Instead, the presumptive SO<sub>2</sub> emission rate served as a necessary simplifying assumption. When the States worked to develop the 309 trading program, they could not be expected to anticipate the future elements of case-by-case BART determinations made by other States (or EPA, in the case of a BART determination through any federal implementation plan), nor could they be expected to anticipate the details of later-installed SO<sub>2</sub> controls or the future application of enforceable emission limits to those controls. The emissions projections by the WRAP incorporated the best available information at the time from the states, and utilized the appropriate methods and models to provide a prediction of emissions from all source categories in this planning period. In developing a profile of planning period emissions to support each state’s reasonable progress goals, as well as the submitted trading program, it was recognized that the final control decisions by all of the states

were not yet complete, including decisions as they may pertain to emissions from BART eligible sources. Therefore, we believe it is appropriate that the analysis and demonstration is based on data that was available to the States at the time they worked to construct the SO<sub>2</sub> trading program. The States did make appropriate adjustments based on information that was available to them at the time. Notably, the WRAP appropriately adjusted its use of the presumptive limits in the case of Huntington Units 1 and 2 in Utah, because those units were already subject to federally enforceable SO<sub>2</sub> emission rates that were lower than the presumptive rate. The use of actual emissions data after the 2006 baseline is not relevant to the demonstration that has been submitted.

**Comment:** SO<sub>2</sub> emissions under the 309 trading program would be equivalent to the SO<sub>2</sub> emissions if presumptive BART were applied to each BART-subject source. Because the reductions are equivalent, the submitted 309 trading program does not show, by “the clear weight of the evidence,” that the alternative measure will result in greater reasonable progress than would be achieved by requiring BART. In view of the reductions being equivalent, it is not proper for EPA to rely on “non-quantitative factors” in finding that the SO<sub>2</sub> emissions trading program achieves greater reasonable progress.

**Response:** We recognize that the 2018 SO<sub>2</sub> milestone equals the BART benchmark and that the benchmark generally utilized the presumptive limits for EGUs, as was deemed appropriate by the States who worked together to develop the trading program. If the SO<sub>2</sub> milestone is exceeded, the trading program will be activated. We note, moreover, that the 2018 milestone constitutes an emissions cap on sulfur dioxide emissions that will persist after 2018.<sup>3</sup> Under this framework, sources that would otherwise be subject to the trading program have

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<sup>3</sup> The trading program can only be replaced via future SIP revisions submitted for EPA approval that will meet the BART and reasonable progress requirements of 51.308. See 40 CFR 51.309(d)(4)(vi)(A).

incentives to make independent reductions to avoid activation of the trading program. We cannot discount that the 2003 309 SIP submittal may have already influenced sources to upgrade their plants before any case-by-case BART determination under Section 308 may have required it. In addition, the trading program was designed to encourage early reductions by providing extra allocations for sources that made reductions prior to the program trigger year. Permitting authorities that would otherwise permit increases in SO<sub>2</sub> emissions for new sources would be equally conscious of the potential impacts on the achievement of the milestone. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. The 309 trading program is designed as a backstop such that sources would work to accomplish emission reductions through 2018 that would be superior to the milestone and the BART benchmark. If instead the backstop trading program is triggered, the sources subject to the program would be expected to make any reductions necessary to achieve the emission levels consistent with each source's allocation. We do not believe that the "clear weight of the evidence" determination referenced in 40 CFR 51.308(e)(2)(E)—in short, a determination that the alternative measure of the 309 trading program achieves greater reasonable progress than BART—should be understood to prohibit setting the SO<sub>2</sub> milestone to equal the BART benchmark. Our determination that the 2018 SO<sub>2</sub> milestone and other design features of the 309 SIP will achieve greater reasonable progress than would be achieved through BART is based on our understanding of how the SIP will promote and sustain emission reductions of SO<sub>2</sub> as measured against a milestone. Sources will be actively mindful of the participating states' emissions inventory and operating to avoid exceeding the milestone, not trying to maximize their emissions to be equivalent to the milestone, as this comment suggests.

**Comment:** In proposing to find that the SO<sub>2</sub> trading program achieves greater reasonable

progress than BART, EPA's reliance on the following features of the 309 trading program is flawed: non-BART emission reductions, a cap on new growth, and a mass-based cap on emissions. The reliance on non-BART emission reductions is "a hollow promise" because there is no evidence that the trading program will be triggered for other particular emission sources, and if the program is never triggered there will be no emission reductions from smaller non-BART sources. The reliance on a cap on future source emissions is also faulty because there is no evidence the trading program will be triggered, and thus the cap may never be implemented. Existing programs that apply to new sources will already ensure that SO<sub>2</sub> emissions from new sources are reduced to the maximum extent. EPA's discussion of the advantages of a mass-based cap is unsupported and cannot be justified. EPA wrongly states that a mass-based cap based on actual emissions is more stringent than BART. There should not be a meaningful gap between actual and allowable emissions under a proper BART determination. A mass-based cap does not effectively limit emissions when operating at lower loads and, as an annual cap, does not have restrictive compliance averaging. EPA's argument implies that BART limits do not apply during startup, shutdown or malfunction events, which is not correct. The established mass-based cap would allow sources to operate their SO<sub>2</sub> controls less efficiently, because some BART-subject EGUs already operate with lower emissions than the presumptive SO<sub>2</sub> emission rate of 0.15 lb/MMBtu and because some EGUs were assumed to be operating at 85% capacity when their capacity factor (and consequently their SO<sub>2</sub> emissions in tpy) was lower.

**Response:** We disagree that it is flawed to assess the benefits found in the distinguishing features of the trading program. The backstop trading program is not specifically designed so that it *will* be activated. Instead sources that are covered by the program are on notice that it will be triggered if the regulatory milestones are not achieved. Therefore, the backstop trading

program would be expected to garner reductions to avoid its activation. It also remains true that if the trading program is activated, all sources subject to the program, including smaller non-BART sources would be expected to secure emission reductions as may be necessary to meet their emission allocation under the program

We also disagree that the features of the 2018 milestone as a cap on future source emissions and as a mass-based cap has no significance. As detailed in our proposal, the submitted SIP is consistent with the requirement that the 2018 milestone does indeed continue as an emission cap for SO<sub>2</sub> unless the milestones are replaced by a different program approved by EPA as meeting the BART and reasonable progress requirements under 51.308. Future visibility impairment is prevented by capping emissions growth from those sources not eligible under the BART requirements, BART sources, and from entirely new sources in the region. The benefits of a milestone are therefore functionally distinct from the control efficiency improvements that could be gained at a limited number of BART subject sources. While BART-subject sources may not be operating at 85% capacity today, we believe the WRAP's use of the capacity assumption in consideration of projected future energy demands in 2018 was reasonable for purposes of the submitted demonstration. While BART requires BART subject sources to operate SO<sub>2</sub> controls efficiently, this does not mean that an alternative to BART thereby allows, encourage, or causes sources to operate their controls less efficiently. On the contrary, we find that the SIP, consistent with the well-considered 309 program requirements, functions to the contrary. Sources will be operating their controls in consideration of the milestone and they also remain subject to any other existing or future requirements for operation of SO<sub>2</sub> controls.

We also disagree with the commenter's contention that existing programs are equivalent in effect to the emissions cap. EPA's new source review programs are designed to permit, not

cap, source growth, so long as the national ambient air quality standards and other applicable requirements can be achieved. Moreover, we have not argued that BART does not apply at all times or that emission reductions under the cap are meant to function as emission limitations are made to meet the definition of BART (40 CFR 51.301). The better-than-BART demonstration is not, as the comment would have it, based on issues of compliance averaging or how a BART limit operates in practice at an individual facility. Instead, it is based on whether the submitted SIP follows the regulatory requirements for the demonstration and evidences comparatively superior visibility improvements for the Class I areas it is designed to address.

**Comment:** The submitted 309 SIP will not achieve greater reasonable progress than would the requirement for BART on individual sources. The BART program “if adequately implemented” will promote greater reasonable progress, and EPA should require BART on all eligible air pollution sources in the state. EPA’s proposed approval of the 309 trading program is “particularly problematic” where the BART sources cause or contribute to impairment at Class I areas which are not on the Uniform Rate of Progress glide-path towards achieving natural conditions. EPA should require revisions to provide for greater SO<sub>2</sub> reductions in the 309 program, or it should require BART reductions on all sources subject to BART for SO<sub>2</sub>.

**Response:** We disagree with the issues discussed in this comment. As discussed in other comments, we have found that the state’s SIP submitted under the 309 program will achieve greater reasonable progress than source-by-source BART. As the regulations housed within section 51.309 make clear, States have an opportunity to submit regional haze SIPs that provide an alternative to source-by-source BART requirements. Therefore, the commenter’s assertion that we should require BART on all eligible air pollution sources in the state is fundamentally misplaced. The commenter’s use of the Uniform Rate of Progress (URP) as a test that should

apparently be applied to the adequacy of the 309 trading program as a BART alternative is also misplaced, as there is no requirement in the regional haze rule to do so.

**Comment:** The 309 trading program must be disapproved because it does not provide for “steady and continuing emissions reductions through 2018” as required by 40 CFR 51.309(d)(4)(ii). The program establishes its reductions through milestones that are set at three year intervals. It would be arbitrary and capricious to conclude these reductions are “steady” or “continuous.”

**Response:** We disagree and find that the reductions required at each milestone demonstrate steady and continuing emissions reductions. The milestones do this by requiring regular decreases. These decreases occur in intervals ranging from one to three years and include administrative evaluation periods with the possibility of downward adjustments of the milestone, if warranted. The interval under which “steady and continuing emissions reductions through 2018” must occur is not defined in the regional haze rule. We find the milestone schedule and the remainder of the trading program submitted by City of Albuquerque - Bernalillo County does in fact reasonably provide for “steady and continuing emissions reductions through 2018.”

**Comment:** The WRAP attempts to justify the SO<sub>2</sub> trading program because SO<sub>2</sub> emissions have decreased in the three Transport Region states relying on the alternative program by 33% between 1990-2000. The justification fails because the reductions were made prior to the regional haze rule. The reliance on reductions that predate the regional haze rule violates the requirement of 40 CFR 51.308(e)(2)(iv) that BART alternatives provide emission reductions that are “surplus” to those resulting from programs implemented to meet other Clean Air Act Requirements.

**Response:** We did not focus on the WRAP’s discussion of early emission reductions in

our proposal. However, we do not agree with this comment. The WRAP's statements regarding past air quality improvements are not contrary to the requirement that reductions under a trading program be surplus. Instead, the WRAP was noting that forward-planning sources had already pursued emission reductions that could be partially credited to the design of the 309 SIP. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. Sources that make early reductions prior to the program trigger year may acquire extra allocations should the program be triggered. This is an additional characteristic feature of the backstop trading program that suggests benefits that would be realized even without triggering of the program itself. The surplus emission reduction requirement for the trading program is not in issue, because the existence of surplus reductions is studied against other reductions that are realized "as of baseline date of the SIP." The 1990-2000 period plainly falls earlier than the baseline date of the SIP, so we disagree that the WRAP's discussion of that period was problematic or violative of 40 CFR 51.308(e)(2)(iv), regarding surplus reductions.

**Comment:** EPA must correct discrepancies between the data presented in the 309 SIP submittals.<sup>4</sup> There are discrepancies in what has been presented as the results of WRAP photochemical modeling. The New Mexico RH SIP proposal by EPA shows, for example, that the 20% worst days at Grand Canyon National Park have visibility impairment of 11.1 deciviews, while the other EPA proposals show 11.3 deciviews. The discrepancy appears to be due to the submittals being based on different modeling scenarios developed by the WRAP. EPA must explain and correct the discrepancies and "re-notice" a new proposed rule containing the correct information.

**Response:** We agree that there are discrepancies in the numbers in Table 1 of the

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<sup>4</sup>This particular comment was not submitted in response to the proposal to approve Albuquerque's 309 trading program, the earliest published proposal. It was consistently submitted in the comment periods for the proposals to approve the 309 trading programs for NM, WY and UT, which were later in time.

proposal notices. The third column of the table below shows the modeling results presented in Table 1 of the Albuquerque, Wyoming and Utah proposals. The modeling results in the New Mexico proposal Table 1 are shown in the fourth column. The discrepancies come from the State's using different preliminary reasonable progress cases developed by the WRAP. The Wyoming, Utah and Albuquerque proposed notices incorrectly identify the Preliminary Reasonable Progress case as the PRP18b emission inventory instead of correctly identifying the presented data as modeled visibility based on the "prp18a" emission inventory. The PRP18a emission inventory is a predicted 2018 emission inventory with all known and expected controls as of March 2007. The preliminary reasonable progress case ("PRP18b") used by New Mexico is the more updated version produced by the WRAP with all known and expected controls as of March 2009. Thus, we are correcting Table 1, column 5 in the Wyoming, Utah and Albuquerque of our proposed notices to include model results from the PRP18b emission inventory, consistent with the New Mexico proposed notice and the fourth column in the table below. We are also correcting the description of the Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory and modeled projections) to reflect that this emission inventory includes all controls "on the books" as of March 2009.

Class I Area	State	2018 Preliminary Reasonable Progress PRP18a Case (deciview)	2018 Preliminary Reasonable Progress PRP18b case (deciview)
Grand Canyon National Park	AZ	11.3	11.1
Mount Baldy Wilderness	AZ	11.4	11.5
Petrified Forest National Park	AZ	12.9	12.8
Sycamore Canyon Wilderness	AZ	15.1	15.0
Black Canyon of the Gunnison National Park Wilderness	CO	9.9	9.8
Flat Tops Wilderness	CO	9.0	9.0
Maroon Bells Wilderness	CO	9.0	9.0
Mesa Verde National Park	CO	12.6	12.5

Weminuche Wilderness	CO	9.9	9.8
West Elk Wilderness	CO	9.0	9.0
San Pedro Parks Wilderness	NM	9.8	9.8
Arches National Park	UT	10.9	10.7
Bryce Canyon National Park	UT	11.2	11.1
Canyonlands National Park	UT	10.9	10.7
Capitol Reef National Park	UT	10.5	10.4
Zion National Park	UT	13.0	12.8

Section 309 requires Transport Region States to include a projection of the improvement in visibility expected through the year 2018 for the most impaired and least impaired days for each of the 16 Class I areas on the Colorado Plateau. 40 CFR 51.309(d)(2). As explained in the preamble to the 1999 regional haze regulations, EPA included this requirement to ensure that the public would be informed on the relationship between chosen emissions control measures and their effect on visibility. 64 FR at 35751. Given the purpose of this requirement, we do not consider the discrepancies noted above to be significant and are not re-noticing our proposed rulemaking as the discrepancies do not change our proposed conclusion that SIP submitted by City of Albuquerque – Bernalillo County contains reasonable projections of the visibility improvements expected at the 16 Class I areas at issue. The PRP18a modeling results show projected visibility improvement for the 20 percent worst days from the baseline period to 2018. The PRP18b modeling results show either the same or additional visibility improvement on the 20 percent worst days beyond the PRP18a modeling results. We also note there are two discrepancies in New Mexico’s Table 1, column four compared to the other participating States’ notices. The 2018 base case visibility projection in the New Mexico proposed notice for Black Canyon of the Gunnison National Park Wilderness and Weminuche Wilderness should be corrected to read 10.1 deciview rather than 10.0. Notwithstanding the discrepancies described above, we believe that the BC SIP adequately projects the improvement in visibility for purposes

of Section 309.

**B.** Additional Comments

**Comment:** The regional haze regulations at 40 CFR 51.308(e)(2)(i)(B) require that “each BART-eligible source in the State must be subject to the requirements of the alternative program, [and] have a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART...” The sole coal-fired electric generating units (“EGUs”) that are subject to BART in New Mexico are the four units at the San Juan Generating Station (“SJGS”). While the BC RH SIP lists SJGS as a BART eligible source, it fails to identify a federally enforceable emission limitation for SO<sub>2</sub> that is determined to be BART by the State and has been approved by EPA as meeting BART. As such, the BC RH SIP fails to comply with 40 CFR 51.308(e)(2)(i)(B).

**Response:** This comment presents a flawed reading of our regulations by inserting the word “and” where it does not, in fact, appear in the language of 40 CFR 51.308(e)(2)(i)(B). 40 CFR 51.308(e)(2)(i)(B) requires that “each BART-eligible source in the State must be subject to the requirements of the alternative program, have a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART in accordance with section 302(c) or paragraph (e)(1) of this section, or otherwise addressed under paragraphs (e)(1) or (e)(4) of this section.” This section of the rule requires that each BART-eligible source be covered by the alternative program or satisfy the BART requirements by either participation in a “Transport Rule Federal Implementation Plan” under paragraph (e)(4) or by determining BART for the source under paragraph (e)(1). Because there are no BART-eligible sources in Bernalillo County, the requirement to make BART determinations does not apply. As was detailed in the proposal, the alternative program satisfies the requirements of 40 CFR 51.308(e)(2)(i)(B),

because all BART-eligible sources are covered by the alternative program. We also note the alternative program goes further to additionally cover point sources that have actual emissions of SO<sub>2</sub> greater than 100 tons per year (sources meeting the requirements of 20.2.81.101.B NMAC).

**Comment:** The BC RH SIP also fails to comply with 40 CFR 51.309(g), which requires that SIPs address impacts to Class I areas not located on the Colorado plateau. 40 CFR 51.309(g). States are required to submit air quality modeling or other reliable evidence revealing visibility impacts and establishing that reasonable progress goals will be met. In December 2010 and February 2011, EPA informed Bernalillo County that its SIP failed to comply with 40 CFR 51.309(g)(1) and (2) because it did not submit evidence showing Bernalillo County's effects on visibility in Class I areas in New Mexico, such as Gila Wilderness and Carlsbad Cavern. EPA Docket EPA-R06-OAR-2008-0702-0011 at pages 110-111 and 126-127. EPA determined that SO<sub>2</sub> emissions in New Mexico were projected to increase from 4,966 tpy in 2002 to 14,073 tpy by 2018 with nearly 30% of the 2018 emissions coming from Bernalillo County. *Id.* EPA also determined that a significant increase in NO<sub>x</sub> emissions from Bernalillo County was projected to occur over this same time period. *Id.* EPA asked Bernalillo County to conduct visibility modeling to determine its impacts to Class I areas and to explain how reasonable progress goals would be met in light of significant emissions increases. *Id.*

The commenters state that they were unable to identify any visibility modeling or other analysis conducted by Bernalillo County to address EPA's concerns. The commenters request an opportunity to review any visibility modeling or related analysis and that EPA reject the BC RH SIP until these issues are fully addressed.

**Response:** The letters referred to by the commenter state that the analysis with regard to the requirements of 40 CFR 51.309(g)(1) and (2) in BC's draft SIP revision shared with EPA in

2010 may be incomplete. Specifically, the qualitative analysis provided in “Appendix 2007-H” and “Addendum to Appendix 2007-H” addressed the impact of BC’s emissions on nearby Class I areas, but did not include information on the inaccuracy and over-prediction in the 2018 WRAP emission projections for NO<sub>x</sub> and SO<sub>2</sub> emissions in BC, or the effect of an accurate emission inventory with respect to modeled visibility degradation at Gila Wilderness and Carlsbad Caverns.

With respect to the above mentioned modeled degradation at Gila Wilderness, an error in data retrieval affected initial results for modeled visibility conditions at Gila Wilderness in 2002 and indicated that visibility would degrade from 2002 to 2018. This error was corrected and the updated submitted data indicates a predicted improvement in visibility conditions on the 20% worst days and no degradation of visibility on the 20% best days.<sup>5</sup> For Carlsbad Caverns, NMED provided modeling data that demonstrates that significant projected growth in emissions by 2018 from Mexico are responsible for the degradation in visibility conditions on the 20% best days at this Class I area (Section 11.3.3 of the NM RH 309(g) SIP submittal). WRAP visibility modeling results with Mexico emissions held constant from 2002 to 2018 show a slight improvement in visibility conditions at Carlsbad Caverns on the 20% best days. Therefore, the initial modeled visibility degradation at both Gila Wilderness and Carlsbad Caverns was addressed without a need to further evaluate the impact of over-estimated NO<sub>x</sub> and SO<sub>2</sub> emissions in BC.

Furthermore, BC provided additional information in Appendix 2010 B of the BC RH SIP<sup>6</sup> that included an evaluation of emission inventory trends for 2002, 2005, and 2008 for NO<sub>x</sub>

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<sup>5</sup> Correction of WRAP region Plan02d CMAQ visibility modeling results on TSS for Regional Haze Planning—Final Memorandum, June 30, 2011, available at: [http://vista.cira.colostate.edu/tss/help/plan02d\\_rev.pdf](http://vista.cira.colostate.edu/tss/help/plan02d_rev.pdf).

<sup>6</sup> AQD exhibit#5 EPA Docket EPA-R06-OAR-2008-0702-0013 beginning at page 227.

and SO<sub>2</sub> emissions for Bernalillo County. The analysis in the BC RH SIP submittal identifies some inaccuracies in the emission inventories used by the WRAP to model the 2002 baseline and the 2018 future case. The 2002 and 2018 emission projections are higher than expected when compared to the reduction in SO<sub>2</sub> emissions observed in the actual emissions inventories for 2002, 2005 and 2008. Table 5 of our proposed approval of the BC RH SIP (77 FR 24790) shows a comparison of emission data from Bernalillo County and a trend of decreasing emissions compared to emissions included in the WRAP estimates and photochemical modeling, projecting a large increase of both NO<sub>x</sub> and SO<sub>2</sub>. Based on the information provided in BC RH SIP submittal, we agree with the determination that visibility impacts at the nearby Class I areas due to area and mobile emission sources in Bernalillo County are overestimated in the WRAP 2002 and 2018 visibility modeling. The emission trends for 2002 through 2008 (BC RH SIP submittal Appendix 2010-B) indicate that emissions of NO<sub>x</sub> and SO<sub>2</sub> within Bernalillo County are declining and therefore visibility impairment due to these emissions are also anticipated to decrease from their current low levels presented in Appendix 2007–H and in the addendum to Appendix 2007–H of the BC RH SIP. We find that BC adequately evaluated the Class I areas that may be impacted by sources of air pollution within Bernalillo County and BC adequately determined and demonstrated that, at this time, it is improbable that sources located within the county cause or contribute to visibility impairment in a Class I area located outside of the county. The BC RH SIP submittal therefore complies with 40 CFR 51.309(g)(1) and (2).

**Comment:** Section 51.308(d)(1)(vi) states, “[t]he State may not adopt a reasonable progress goal that represents less visibility improvement than is expected to result from implementation of other requirements of the CAA during the applicable planning period. 40 CFR

51.308(d)(1)(vi). Since the BC RH SIP's reasonable progress goals would result in less visibility improvement than would be achieved through application of BART, the BC RH SIP's reasonable progress goals must be revised to reflect reductions achievable through BART.

***Response:*** There are no Class I areas within Bernalillo County, therefore BC is not required to nor did they adopt reasonable progress goals for any Class I area. BC is required to address the apportionment of visibility impact from the emissions generated by sources within Bernalillo County at Class I areas outside of the county borders. As discussed above, we find that BC adequately evaluated the Class I areas that may be impacted by sources of air pollution within Bernalillo County and BC adequately determined and demonstrated that, at this time, it is improbable that sources located within the county cause or contribute to visibility impairment in a Class I area located outside of the county.

In addition, no sources in Bernalillo County satisfy the definition for BART-eligible sources at 40 CFR 51.301. Therefore, no visibility improvement is anticipated due to the application of BART within Bernalillo County. We note, that BC is participating in the SO<sub>2</sub> emission milestone and backstop trading program. This program applies to all SO<sub>2</sub> point sources over 100 tons per year and requires that emissions in the participating States and BC remain below the established milestone or result in the triggering of the 309 backstop trading program. The milestone caps these sources at actual emissions, and the program also provides for a cap on new source growth. The milestone schedule and the trading program submitted by BC and the participating states provide for steady and continuing emissions reductions through 2018.

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that

complies with the provisions of the Act and applicable Federal regulations. 42 USC 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Consistent with EPA policy, EPA nonetheless offered consultation to tribes regarding the rulemaking action

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the

effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Regional haze, Best available control technology, Interstate transport of pollution, visibility.

Dated: November 13, 2012.

Ron Curry,  
Regional Administrator,  
Region 6.

40 CFR part 52 is amended to read as follows:

**PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart GG – New Mexico**

2. Section 52.1620 is amended:
  - a. In paragraph (c), under the second table entitled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” by revising the entry for Part 21 (20.11.21 NMAC), Open Burning and adding an entry in sequential order for “Part 46 (20.11.46 NMAC)”.
  - b. In paragraph (e), under the second table entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in The New Mexico SIP” by adding new entries to the end of the table for “Interstate transport for the 1997 ozone and PM<sub>2.5</sub> NAAQS” and “Regional Haze SIP under 40 CFR 51.309”.

The amendments read as follows:

**§ 52.1620 Identification of plan.**

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(c) \* \* \*

**EPA Approved Albuquerque/Bernalillo County, NM Regulations**

State Citation	Title/Subject	State approval/effective date	EPA approval date	Explanation
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New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
*      *	*      *	*      *	*      *	
Part 21 (20.11.21 NMAC)	Open Burning	7/11/2011	[Insert date of publication in the Federal Register and FR page number where document begins]	
*      *	*      *	*      *	*      *	
Part 46 (20.11.46 NMAC)	Sulfur Dioxide Emission Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program	5/16/2011	[Insert date of publication in the Federal Register and FR page number where document begins]	
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(e) \*      \*      \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE  
NEW MEXICO SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Explanation
*      *	*      *	*      *	*      *	
Interstate transport for the 1997 ozone and PM <sub>2.5</sub> NAAQS	Bernalillo County	7/30/2007	[Insert date of publication in the Federal Register and FR page number where document begins]	Revisions to prohibit interference with measures required to protect visibility in any other State. Revisions to prohibit contribution to nonattainment in any other State approved 11/8/2010 (75 FR 68447)

Regional Haze SIP under 40 CFR 51.309	Bernalillo County	7/28/2011	<b>[Insert date of publication in the Federal Register and FR page number where document begins]</b>	
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[FR Doc. 2012-28822 Filed 11/28/2012 at 8:45 am; Publication Date: 11/29/2012]